

1 PAMELA L. COX (State Bar No. 191883)
2 **HEMAR, ROUSSO & HEALD, LLP**
3 15910 Ventura Boulevard, 12th Floor
4 Encino, California 91436
5 (818) 501-3800; (818) 501-2985 (Fax)
6 e-mail: pcox@hemar-rousso.com
7 Refer to File Number: 3968-20080200-PLC

8 Attorneys for Defendant
9 FIRST FEDERAL BANK OF CALIFORNIA
10

11 IN THE UNITED STATES DISTRICT COURT
12
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 DEBORAH E. JOHNSON and
16 GERALD D. JOHNSON,

17 Plaintiffs,

18 v.

19 FIRST FEDERAL BANK OF
20 CALIFORNIA,

21 Defendant.
22

CASE NO. C08-00264PVT

[Ordered Related to Case No. 08-
01796PVT]

DEFENDANT'S REVISED CASE
MANAGEMENT STATEMENT

Patricia V. Trumbell, Magistrate

Date: September 9, 2008
Time: 2:00 p.m.
Courtroom: 5

23 **TO THE HONORABLE PATRICIA V. TRUMBELL, MAGISTRATE:**

24 Defendant FIRST FEDERAL BANK OF CALIFORNIA ("Defendant") submits this
25 Case Management Statement to the Court.

26 1. Jurisdiction and Service: The court's jurisdiction over this case is currently the
27 subject of Defendant's Motion to Dismiss the Second Amended Complaint, set for
28 hearing on October 7, 2008. Plaintiffs contend that this court has jurisdiction over this
case since it involves federal questions, specifically, issues under the RICO Act.

Defendant contends that the court lacks subject matter jurisdiction over Plaintiff Gerald
Johnson, since he was not a party to the loan transaction at issue and that since the RICO

1 claims are fatally deficient, there is no longer any federal question involved in this
2 dispute. Only one Defendant was named, and has been served.

3 2. Facts: Plaintiffs contend that they did not receive proper TILA and HOEPA
4 disclosures, that the loan at issue was induced by fraud, and that the property at issue was
5 wrongfully foreclosed upon. Defendant contends that all of the requisite disclosures were
6 duly provided, that any misrepresentations involved in the loan were made by Plaintiff
7 Gerald Johnson and his mortgage broker, and that the property was properly foreclosed
8 upon after Plaintiff Deborah Johnson defaulted by failing to make the loan payments.
9 Defendant further claims that there were no misrepresentations made in connection with
10 the figures provided to Plaintiff Deborah Johnson to bring the loan current in April
11 through June of 2007, and that the figures provided to the United States Bankruptcy Court
12 were true and accurate

13 3. Legal Issues: The principal legal issue in dispute at this time is whether Plaintiffs
14 have a fraud claim against the Defendant in connection with the figures provided by
15 Deborah Johnson to bring the loan current in the Spring of 2007.

16 4. Motions: Defendant filed a third Motion to Dismiss, which is scheduled for
17 hearing on October 7, 2008.

18 5. Amendment of Pleadings: If Defendant's motion to dismiss the second amended
19 complaint is not successful, it plans to bring a cross-complaint against one or both of the
20 Plaintiffs. The motion to dismiss is set for hearing on October 7, 2008. If ruled upon on
21 or about this same date, and the action remains viable, Defendant will file its answer and
22 cross-complaint by the end of October, 2008.

23 6. Evidence Preservation: From Defendant's perspective, evidence preservation is
24 not an issue in this matter. Further, Defendant assumes Plaintiffs will take steps to
25 preserve any pertinent documents and/or other tangible evidence.

26 7. Disclosures: The parties have disclosed most of the relevant documents through
27 the three motions to dismiss filed by Defendant, and opposed by Plaintiff. The parties
28 met and conferred by telephone regarding the issues in this action and agree that further

1 meet and confer efforts should be undertaken after the Motion to Dismiss Second
2 Amended Complaint set for October 7, 2008 is ruled upon.

3 8. Discovery: If Defendant's Motion to Dismiss Second Amended Complaint set
4 for hearing on October 7, 2008 is not successful, the parties intend to propound written
5 discovery upon each other. Written discovery is expected to be completed by the end of
6 January, 2009. In addition, the parties intend to conduct depositions of the Plaintiffs and
7 key witnesses in February and March, 2009. At the present time, the parties do not
8 anticipate that any limitations or modifications of the discovery rules will be necessary.
9 However, the parties agree that a discovery plan is difficult to formulate at this time
10 because the case is not at issue.

11 9. Class Actions: Not applicable.

12 10. Related Cases: The action pending as *Gerald Johnson and Deborah Johnson v.*
13 *First Federal Bank of California*, Case Number 08-01796 PVT, has been ordered related
14 and consolidated to the case at bar.

15 11. Relief: To date, Plaintiffs have not formulated their alleged damages.

16 12. Settlement and ADR: The parties discussed ADR and agreed that because
17 Defendant's motion to dismiss the second amended complaint is still pending, and will
18 not be heard, ADR is premature at this point in time. The parties requested an ADR
19 telephone conference to discuss this issue with the court.

20 13. Consent to Magistrate Judge for All Purposes: The parties do and have
21 consented to have a magistrate judge conduct all further proceedings including trial and
22 entry of judgment.

23 14. Other References: At this time, the parties do not believe binding arbitration, a
24 special master or the Judicial Panel on Multidistrict Litigation are appropriate.

25 15. Narrowing of Issues: Not applicable at this time.

26 16. Expedited Schedule: Not applicable at this time.

27 17. Scheduling: Since the case is not yet at issue, the parties request a continuance of
28 the Case Management Conference, at which point the parties will be better equipped to

1 discuss proposed dates for the designation of experts, discovery cutoff, dispositive
2 motions, pre-trial conference and trial.

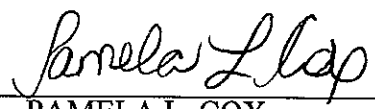
3 18. Trial: Plaintiffs demand a jury trial.

4 19. Disclosure of Non-party Interested Entities or Persons: The parties have not filed
5 the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16.

6 20. The parties request that the Case Management Conference be continued until
7 after Defendant's Motion to Dismiss Second Amended Complaint is heard and ruled upon
8 by the Court.

9
10 DATED: August 29, 2008

HEMAR, ROUSSO & HEALD, LLP

11
12 By: 
13 PAMELA L. COX
14 Attorneys for Defendant
15 FIRST FEDERAL BANK OF
16 CALIFORNIA
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is Hemar, Rousso & Heald, LLP. ("the business") 15910 Ventura Boulevard, 12th Floor, Encino, CA 91436.

I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

On September 2, 2008, I served the foregoing document described as **DEFENDANT'S REVISED CASE MANAGEMENT STATEMENT** on the interested parties in this action by placing a true and correct copy thereof in a sealed envelope addressed as follows:

DEBORAH E. JOHNSON
PO Box 4448
Carmel, CA 93921-4448

GERALD D. JOHNSON
PO Box 4448
Carmel, CA 93921-4448

XX At my business address, I placed such envelope for deposit with the Federal Express or XX U.S. Postal Office by placing them for collection and mailing on that date following ordinary business practices.

 I delivered such envelope(s) by hand to the offices of the addressees.

 I caused such copies to be facsimiled to the persons set forth.

 (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

XX (Federal) I declare under penalty of perjury under the laws of the United States of America that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 2, 2008 at Encino, California.


LISA FIELDS